IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

Crl.MC.No. 1856 of 2007()

LP.39/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI

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PETITIONER/ACCUSED NO.2:

SALIMKUMAR.S.S., AGED 36 YEARS,
S/O.SADANANDAN P.K., KANNATTUTHARAYIL,
MADMON MURI, PERUNAD VILLAGE.

BY ADV. SRI.V.SETHUNATH

RESPONDENTS: COMPLAINANT & STATE:

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1. C.I.OF POLICE, OFFICE OF THE C.I.
VADASSERIKKARA.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1856 of 2007

Dated this the 11th day of June, 2007

ORDER

Petitioner is the 2nd accused in a prosecution for offences punishable, inter alia, under Section 379 read with 34 I.P.C. The petitioner has not made himself available for trial. The case against him has been split up and is now pending in the Long Pending register of the court. The petitioner has now come to this Court with a prayer that the proceedings against him may be quashed invoking the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C.

2. What are the reasons ? The learned counsel for the petitioner contends that as against him, there is no evidence at all. He further contends that in the trial that was held against the co-accused, there has been findings, which do not justify the allegations raised against the petitioner now. In these circumstances, it is prayed that the proceedings against him may be brought to premature termination putting an end to the agony and trauma which the petitioner has been compelled to endure.

3. It is by now trite after the decision in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552] that the acquittal of the co-accused is no reason for an absconding co-accused to claim any

benefit or advantage on the basis of such acquittal of the co-accused. The petitioner has not been co-operating with the court in the progress of the case. He has been absconding for a long period of time. At the moment and with the available inputs, I find absolutely no reason to come to the conclusion that the proceedings against the petitioner must be brought to premature termination. It is for the petitioner to appear before the learned Magistrate and claim discharge at the stage of Section 239/240 Cr.P.C or acquittal at later stages.

4. The mere fact that an accused may probably succeed in his claim for discharge/acquittal by itself is no reason for him to claim premature termination of proceedings by invoking the powers under Section 482 Cr.P.C. Having gone through all the relevant circumstances, I am certainly of the opinion that in the facts and circumstances of this case, the petitioner must appear before the learned Magistrate and claim discharge/acquittal as the case may be.

5. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-